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No. 90-1934

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

TRIUMPH TANKERS LTD.,

Petitioner,

vs.

KERR-McGEE REFINING CORPORATION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION

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Dated: July 17, 1991

QUESTIONS PRESENTED

May a Court conduct a *de novo* review and deny confirmation of the arbitrators' RICO award when it was established that at least four racketeering acts occurred during the span of the contract?

May arbitrators, appointed under an agreement to arbitrate "[a]ny and all differences and disputes of whatsoever nature arising out of" the contract, consider evidence beyond the specific contract when deciding a RICO claim?

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RESPONDENT'S BRIEF IN OPPOSITION TO PETITION

Respondent, Kerr-McGee Refining Corp. ("Kerr-McGee")[1], respectfully requests that this Court deny the Petition for a Writ of Certiorari seeking to review the judgment and opinion of the United States Court of Appeals for the Second Circuit dated January 28, 1991.

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[1] Pursuant to Supreme Court Rule 29.1, Kerr-McGee states that its corporate parent is Kerr-McGee Corporation and that it has no subsidiaries other than wholly-owned subsidiaries.

I. STATEMENT OF THE CASE

Respondent incorporates by reference the "Background" section of the Second Circuit's opinion in this case. Pet. App. 3a-5a. Respondent attaches hereto the Partial Final Award of the arbitrators dated September 7, 1988, together with Appendix A thereto, as well as Appendix B to the arbitrators' Final Award dated March 28, 1990, both of which petitioner omitted from the Appendix to the Petition for a Writ of Certiorari. Resp. App. A-1 - A-10.

The Petition for a Writ of Certiorari is premised on two factually inaccurate positions.

First, as emphasized in the opinion of the Second Circuit, the full text of the arbitration agreement provides:

> *Any and all differences and disputes of whatsoever nature* arising out of this Charter shall be put to arbitration ****

(Emphasis added as in the Second Circuit opinion)

Pet. App. 3a.

The arbitration agreement is therefore broader then petitioner's construction of "arising out of" suggests (at Petition, p.3).

Second, contrary to petitioner's argument that the arbitrators based their finding of a RICO pattern on a single racketeering act on the voyage in question, the arbitration panel established that petitioner Triumph Tankers Ltd. ("Triumph") committed at least four acts of racketeering predicates during the voyage in question (see Point IV. A below).

Under these circumstances, this Court should not review the Second Circuit's decision which confirmed the arbitrators' award.

II. REASONS FOR DENYING THE WRIT

Respondent respectfully submits that the "special and important reasons" which justify the granting of a Writ of Certiorari (Sup.Ct.R. 10) are not present in this case.

The petitioner seeks to have the Court believe that damages under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§1961-1968 ("RICO"), were improperly awarded because:

(a) The arbitrators exceeded their powers since the "pattern" of racketeering activities was based on events which did not "arise out of" the charter party; and

(b) Even if the arbitrators did not exceed their powers, the arbitrators only found one 'racketeering act'—the conversion of cargo.

Petitioner's arguments are factually incorrect for the reasons set forth below and do not warrant consideration by this Court.

A. THE FACTS FOUND BY THE ARBITRATORS DO NOT PRESENT THE ISSUES RAISED BY PETITIONER AND INSTEAD SUPPORT THE EXISTENCE OF A "PATTERN" NECESSARY TO SATISFY RICO REQUIREMENTS

The arbitration panel did not indicate which of its findings were relied upon for the award of treble damages under RICO. However, petitioner's contention that there was just one "racketeering act" and that the arbitrators necessarily looked to other vessels or voyages to establish a RICO "pattern" ignores the arbitrators' following findings which support the existence of a "pattern" of racketeering activity within the single voyage which was the subject of the dispute. Only two predicate acts

need be established within a ten-year period. 18 U.S.C. §1961(5).

First, the panel found that the vessel in question, the M/T TRIUMPH (the "Vessel"), had permanent concealed modifications to its cargo tanks and cargo lines at the time of the voyage (Resp. App. A-5 - A-6) which were created by welding and/or plating over parts of the vessel. Pet. App. 26a. The panel found that the purpose of these modifications was to steal oil cargo. Pet. App. 27a. These modifications constitute a scheme to obtain oil by means of fraudulent pretenses and is in violation of 18 U.S.C. §2314. Second, the panel found that petitioner stole a total of 7,497.4 barrels of Kerr-McGee's oil cargo in two separate thefts in violation of 18 U.S.C. §659. Resp. App. A-5 - A-6. Third, the panel found that petitioner knowingly transported Kerr-McGee's stolen cargo in foreign commerce and that the stolen cargo had a value in excess of $5,000.00. Pet. App. 28a. This act is in violation of 18 U.S.C. §2314. Fourth, the panel found that the Vessel's officers possessed and concealed the theft of crude oil. This act was accomplished through concealed modifications to the Vessel's tanks and pipe lines, by regularly altering the Vessel's log books (Pet. App. 26a-27a) and by giving false sworn testimony (Pet. App. 21a-22a), all of which was in violation of 18 U.S.C. §2315.

The dissent to the arbitrators' Final Award makes many arguments why the award of RICO damages is improper. However, the dissent should be given no weight whatever as the dissenting arbitrator was personally interested in the outcome. The dissenting arbitrator is the president of Brokerage & Management Corp., the New York affiliate of the Trade & Transport Group of companies. *Uco Terminals, Inc. v. Apex Oil Co.*, 583 F.Supp. 1213, 1214-1215 (S.D.N.Y. 1984). Trade & Transport Inc. was the owner of the tanker **LAUBERHORN**. In a case similar to the one at Bar, Valero Refining Company, Inc. sought RICO damages against Trade

& Transport for alleged theft of Valero's oil cargo on board the **LAUBERHORN**. The Fifth Circuit ordered Trade & Transport and Valero to arbitrate those disputes in New York in 1987. *Valero Refining, Inc. v. M/T LAUBERHORN,* 813 F.2d 60 (5th Cir. 1987). The **LAUBERHORN** arbitration was nearing conclusion at the very time that the dissenting arbitrator and the Triumph majority were deliberating and writing the Triumph award. There can be little doubt that the Triumph dissent was designed to influence the outcome of the **LAUBERHORN** arbitration by making arguments to be accepted by that panel or the courts. The Triumph Decision and Final Award is dated March 28, 1990. Pet. App. 20a. The dissent is dated March 26, 1990. Pet. App. 32a. The **LAUBERHORN** arbitration award, dated August 23, 1990, shows that its panel was keenly aware of the Triumph matter as it cited the District Court's July 10, 1990 Opinion and Order vacating the RICO award in this case. *Trade & Transport, Inc. v. Valero Refining Company, Inc.*, Award No. 2699 at 42 (LEXIS, Admrty Library, Usawds file). However, the **LAUBERHORN** arbitrators rejected the Triumph dissent's arguments unanimously finding that:

> The master of the **LAUBERHORN** with the help of his fellow officers and certain crew members, at the behest of and with the encouragement of his employer, Trade, deliberately and repeatedly transferred cargo from the cargo tanks into the bunker tanks, with the intention of using such oil as fuel oil.

Trade & Transport at 23.

The **LAUBERHORN** arbitrators then found *Trade & Transport* liable for a violation of RICO.

Based on the facts set forth above, the arbitrators had abundant evidence before them with which to find each of the

RICO elements within the voyage performed under the charter in question and the dissent to the Decision and Final Award should be given no weight whatever.

B. THE SECOND CIRCUIT DECISION REVIEWING THE SCOPE OF ARBITRATORS' POWER IS A PROPER APPLICATION OF LEGITIMATE POLICY GOALS TO THE GOVERNING CONTRACT

1. THE ARBITRATION AGREEMENT IN QUESTION CREATES A BROAD AGREEMENT TO ARBITRATE

The Court should also not be misled by petitioner's arguments which seek an unduly restrictive interpretation of the phrase "arising out of." As emphasized by the Second Circuit, the full text of the opening clause of the arbitration agreement which defines the arbitrable issues provides:

> *Any and all differences and disputes of whatsoever nature* arising out of this Charter shall be put to arbitration ****
>
> (Emphasis added as in Second Circuit opinion).
>
> Pet. App. 3a.

The Second Circuit noted that even though the broad arbitration provision permits the panel to look at evidence beyond the voyage in question, the arbitrators' decision imposes liability only on the petitioner for claims arising out of the voyage subject to the charter:

> The dispute here was directly based on a shortage in the fuel oil delivered at the end of the single voyage covered by Charter. It is true that Kerr-McGee thereafter obtained evidence that the shortage was

> intentional and part of a prior practice. This evidence, however, did not alter the facts that the dispute arose "out of" the Charter and the damages were inflicted during **TRIUMPH's** performance under it. Even though the arbitration panel looked at other voyages, it did not determine the liability of a person not party to the contract, . . . The award here imposes liability only on Triumph, a party to the Agreement to arbitrate.

Pet. App. 6a.

2. IT IS WELL-ESTABLISHED LAW THAT ARBITRATORS MAY LOOK BEYOND THE SPECIFIC TRANSACTION GOVERNED BY THE ARBITRATION AGREEMENT

There is nothing new or radical in arbitrators looking beyond the specific transaction governed by the agreement to arbitrate. Arbitrators, for example, regularly look to evidence of industry custom and practice in connection with a dispute arising out of a single contract. Custom and practice clearly develop even before the existence of the disputed contract and do not directly involve the parties to the contract. As this Court stated in *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, (1960) the:

> . . . arbitrator's source of law is not confined to the express provisions of the contract, as the industrial common law—the practices of the industry and the shop—is equally a part of the collective bargaining agreement although not expressed in it.
>
> 363 U.S. at 581-582.

This reasoning is sound since implicit in the parties' choice of arbitration as a method of dispute resolution is their desire for a resolution which will reflect industry practices and standards.

Additionally, this Court has specifically recognized that the nature of some types of claims *requires* arbitrators to look at evidence beyond the immediate agreement to arbitrate. In *Prima Paint Corp. v. Flood & Conklin Mfg.. Co.*, 388 U.S. 395 (1967), for example, this Court held that arbitrators have the power to determine a claim of fraud in the inducement of the contract which contains the arbitration agreement.

Maritime arbitrators must necessarily look beyond the transaction governed by the agreement on the many occasions when they must decide the central issue under the Carriage of Goods by Sea Act, 46 U.S.C. §1300-1315 ("COGSA"), that is, whether due diligence has been exercised to make the vessel seaworthy *prior* to the commencement of a voyage (46 U.S.C. §1304). By definition, all evidence of due diligence arises prior to the contract that contains the arbitration provision. If arbitrators were unable to consider prior events, the maritime arbitration process would be severely undermined.

3. ARBITRATORS MUST HAVE POWER TO LOOK BEYOND THE SPECIFIC TRANSACTION GOVERNED BY THE ARBITRATION AGREEMENT TO HAVE EFFECTIVE ARBITRATION OF RICO CLAIMS

This Court has definitively held that RICO claims are arbitrable. *Shearson/American Express, Inc. v. McMahon,* 482 U.S. 220, 242 (1987). The RICO statute requires that two "racketeering acts" within ten years must be established. 18 U.S.C. §1961(5). The victim of those predicate acts, however, need not be the plaintiff who claims injury from the pattern of racketeering. *See, e.g., H.J., Inc. v. Northwestern Bell Telephone Co.,* 492 U.S. 229 (1989). To forbid arbitrators from hearing evidence of predicate acts which were committed outside the time span of the contract and to forbid them from hearing evidence of predicate acts committed against others

who are not parties to the contract in arbitration would strip arbitrators of their power to hear many RICO disputes. The facilitation of arbitration which the Supreme Court hoped to achieve through its ruling in *McMahon, supra,* would be lost. In fact, the burdens on courts would increase as litigation would constantly be required to determine what cases (or indeed, what issues) were arbitrable. For these very reasons, respondent, in the instant case, filed a precautionary Second Amended Complaint to state RICO claims in the event that the District Court's Opinion and Order vacating the Decision and Final Award is affirmed.

In sum, arbitrators must be free to look to events prior to the transaction in question and there is nothing new or remarkable in such a practice. Imposition of the restrictive standard advocated by petitioner, however, would disembowel the arbitral process.

4. PETITIONER DEMANDS A RADICAL AND DISRUPTIVE DEPARTURE FROM THIS COURT'S WELL-ESTABLISHED POLICY REGARDING THE REVIEW OF ARBITRATION AWARDS

This Court has established a clear policy which favors contractually agreed upon arbitration and has recognized the concomitant necessity of assuring the finality of arbitration awards. Petitioner, however, asks this Court to hold that the district courts should review the merits of arbitrators' awards and vacate an award which fails to state specific reasons for its conclusion, even though those reasons are contained within the award.

Presently, an award of arbitrators "may be made without explanation of their reasons and without a complete record of their proceedings." *Wilko v. Swan,* 346 U.S. 427, 436

(1953), *rev'd on other grounds, Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477 (1989). It is the arbitrators' construction of the contract that was bargained for, not the court's. *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 596 (1960). Accordingly, the Second Circuit has established that an arbitration award will not be vacated when the arbitrator explains a decision "in terms that offer even a barely colorable justification for the outcome reached." *Andros Compania Maritima, S.A. v. Marc Rich & Co.*, 579 F.2d 691, 704 (2d Cir. 1978). Not even petitioner has suggested that there is any conflict among the circuits on this rule.

If this Court were now to require courts to abandon the present well-established standard of review noted above, that decision would obviously be at odds with developed policy which favors the autonomy of the arbitration process. It would also require not only the Second Circuit, but courts across the United States which have followed the Supreme Court's guidelines, to articulate new standards governing the review of arbitration awards. Additionally, the district courts would be required to submerge themselves in the merits of disputes that parties have contracted to be heard by arbitrators. In sum, this Court should not, as petitioner demands, make a radical and disruptive departure from its well-established policy limiting the review of arbitration awards.

C. THE QUESTIONS PETITIONER RAISES DO NOT MERIT REVIEW

The Second Circuit opinion is well reasoned and is tailored to allow the arbitration of RICO claims in conformity with well-established policy which protects the autonomy of the arbitration process. Petitioner advocates a rule of law which would call into question established arbitration practices such as the consideration of industry practice and the narrow standard governing judicial review of arbitration awards. The

rule of law proposed by petitioner would make the arbitration of many RICO claims impossible and would cause an undesirable realignment of the arbitration versus litigation balance. Moreover, this is not the appropriate case for consideration of the issues raised as the arbitrators' awards demonstrate sufficient facts to justify their confirmation.

CONCLUSION

For the foregoing reasons the Petition for a Writ of Certiorari should be denied.

Respectfully Submitted,

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MARIA L. ALONSO
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Of Counsel

APPENDIX

In the Matter of the Arbitration	:	
	:	
between	:	
	:	Partial Final
Triumph Tankers Ltd., as	:	
Owners of the TRIUMPH	:	
	:	
and	:	
	:	
Kerr McGee Refining Corp.,	:	
as Charterers	:	

Before: Alexis Nichols
Louis P. Sheinbaum, Esq.
Manfred W. Arnold, Chairman

Appearances: Burlingham Underwood & Lord
for and on behalf of Triumph Tankers Ltd.
by Joseph C. Smith, Esq., of Counsel

Nourse & Bowles
for and on behalf of Kerr McGee
Refining Corp.
by John P. Vayda, Esq., of Counsel

This dispute arises out of a voyage charter party (ASBA-TANKVOY Form) dated March 5, 1984 between Triumph Tankers Ltd. (hereinafter "Owners") and Kerr McGee Refining Corp. (hereinafter "Charterers"), under which the parties agreed to arbitrate "(a)ny and all differences and disputes of whatsoever nature arising out of this charter . . . ".

The printed ASBATANKVOY Form, Part II, provided:

Clause 10 - PUMPING IN AND OUT.

The cargo shall be pumped into the Vessel at the expense, risk and peril of the Charterer, and shall be pumped out of the Vessel at the expense of the Vessel, but at the risk and peril of the Vessel only so far as the Vessel's permanent hose connections where delivery of the cargo shall be taken by the Charterer or its consignee. . . .

The contract covered a voyage from one safe port East Coast United Kingdom to port(s) in the U.S. Atlantic or Gulf of Mexico range on the basis of a part cargo of minimum 70,000 tons.

The vessel loaded at the Nigg Oil Terminal 539,999 net bbls. of Beatrice Crude with an API of 39.2. The quantity was determined by shore flow meters and same was incorporated in the Bill of Lading dated March 10, 1984 which showed Kerr McGee Refining Corporation as the consignee at Corpus Christi. Free water in the cargo tanks, after loading, was 1,947 bbls., for which Kerr McGee protested to shippers (Britoil) in writing. Ship's figures at the Nigg Terminal, as reflected by the Chief Officer's calculations, using vessel's records, show a cargo loaded of 545,033 net bbls. Vessel's bunker tanks were sounded by Charterers' surveyors and showed 1,281.871 L/T fuel upon arrival at the Nigg Terminal and 1,267.871 L/T at the time of sailing.

Upon arrival at Corpus Christi, ullages were taken by E. W. Saybolt (appointed by Charterers) and attended to by Hull & Cargo Surveyors, Inc. (retained by Owners). Saybolt calculated the cargo on board to be 538,250.09 gross bbls.

Pursuant to Saybolt's report (before "corrected"), the shore tank gauging showed a receipt of 528,060.65 net bbls.[1] and 3,198 bbls. of free water.[2] Again, Charterers' surveyors conducted a bunker survey which established 393.1 L/T fuel upon arrival and 359.38 L/T upon completion of discharge.

With respect to the claims, it appears that initially Charterers deducted $213,000 from freight to cover an alleged short delivery of cargo. On or about May 11, 1984, Charterers paid the withheld freight, with Owners now claiming for interest on the delayed payment.

Charterers' original claim was for the short delivery of 4,835.91 bbls., which equated to $150,638.59.[3] Subsequently, Charterers developed information,[4] according to which vessel's No. 3 centertank and its internals contained certain modifications (by welding and/or plating over apertures) which in fact created a retaining area or tank within this particular tank. The report refers at page 9 to,

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[1] Charterers' Exhibit 6, p. 3

[2] Charterers' Exhibit 6, p. 4

[3] The 4,835.91-barrel amount was calculated by taking the barrels on board based upon ship's tanks ullages on loading, according to surveyors appointed by owners, and surveyors appointed by charterers (Charterers' Exhibits 2, p. 13 and 4, p. 7) of 545,033 barrels (which Owners say was incorrectly calculated), less the 538,250.09 gross barrels on board on arrival, as calculated by Saybolt, based upon ship tank ullages, less 1,947 barrels of water.

[4] This data was obtained from a survey and photographs of the RIO (ex TRIUMPH) (Charterers' Exhibit 34) while being dismantled by the breakers in China. The report, dated March 27, 1986, was prepared by McLaren, Dick & Co. (Asia) Ltd. for the account of Clyde & Co. in an unrelated matter.

> *. . . a spur line of smaller diameter which for the most of its length ran inboard and parallel to the main (cargo) line on the outboard side of the starboard girder in the forward bay of No. 3 centre tank. At the forward end the spur line was fitted with a (gate type) suction valve and short bend which was connected to a "tee" piece in the main line adjacent to bulkhead No. 2/3. At the aft end the spur line turned inboard, and passed through the side girder into the starboard aft corner of the "enclosed area" where it dropped down and terminated in a suction strum.*

It is Charterers' contention that they have at the least established that vessel's ullage readings were unreliable and, therefore, should be disregarded in favor of shore readings. Charterers have amended their claim to reflect the loss of 11,938.35 bbls. (based on net shore-to-shore readings) for $371,879.60.

What appeared at first sight to be a fairly simple case of a short delivery developed over the seven hearings into a complex matter involving allegations of cargo stealing by this vessel, as well as other vessels operated by the same managers, perjury by the vessel's Chief Engineer, alterations to the Deck and Engine logs, etc.

Because of the alleged conversion of cargo, Charterers are also now seeking treble damages (under the RICO[5] statute), together with an award for interest, costs and reasonable attorneys' fees.

Owners deny Charterers' allegations, both as to the cargo shortage and the cargo conversion. Owners conceded that

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[5] Racketeer Influenced Corrupt Organizations Act

vessel's ullages at the loading port were incorrect and they agreed to be bound by the shore or Bill of Lading figures.

Owners similarly agree that the vessel, upon arrival at Corpus Christi, had the quantity stated by the Charterers and that the apparent in-transit loss represented the 3,198 bbls. of free water, or 1,251 bbls. increase of free water during the voyage. They attribute this increase to water settling out of cargo.

Owners furthermore dispute that the cargo had a BS&W of 0.06%. They alleged that the cargo at Nigg Terminal was not the same for which the Quality Certificate was issued showing API of 39.2 as opposed to 38.4 determined at Corpus Christi. As a result of this inconsistency, they asserted that the BS&W of 0.06% was in doubt and would account for the increase of free water during the voyage.

Finally, Owners dispute that the McLaren report at the demolition yard in China had any probative value because Owners were never invited to attend, and furthermore Owners contend that the report itself is not authenticated.

Owners have accepted the loadport shore figure as the controlling quantity on the grounds that vessel's calculations contained obvious errors.[6] The loadport vessel ullage figures were about 5,000 bbls. greater than the shore (Bill of Lading) quantity. With respect to the discharging port ullages, the panel has decided to accept the shore figures for the calculation of cargo delivered because of the imprecise cargo volume determination in centertank No. 3. Put another way, it is obvious that, given the above modifications to the No. 3 centertank of the TRIUMPH, the tank ullages cannot be relied upon to determine how much cargo had been loaded on board and/or delivered by the vessel. We base this decision on our

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[6] Owners' Main Brief, p. 5

conclusion that the modifications found in the No. 3 centertank (in China during the scrapping operation) were existent on board the TRIUMPH at the time of this voyage.

At this time, we do not make a determination as to whether or not Owners were privy to the modification as a pre-existing condition when (or after) they acquired the vessel, or whether Owners in fact arranged for these structural changes. It is, however, apparent that the existence of the retaining area in the No. 3 centertank rendered vessel's tank measurements unreliable.

In view of the above conclusions, there is no need to deal with the changes of the API or any other data relating to the observed data with respect to cargo on board the vessel. Using the shore figures for the loading and discharging ports, the panel concludes that the vessel failed to deliver 7,497.41 net bbls.[7] of Beatrice Crude Oil. The panel accepts the CIF value of $31.15[8] as the proper measure of damages which resulted in a loss to Charterers of $233,544.32. We also award interest at the rate of 9.5% per annum from March 30, 1984 to the date of this award.

Charterers have raised the issue of RICO as a basis for their claim for treble damages. The panel has carefully considered the arguments, particularly in view of the *Shearson/American Express v. McMahon* decision,[9] where the court found that RICO claims indeed are arbitrable; and *Valero*

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[7] Which is the difference between 539,999 net bbls. at the loadport as Bill of Lading quantity (Owners' Exhibit 3-a) and 532,501.59 net bbls. at the discharging port (Charterers' Exhibit 6 - Saybolt Shore Tank Gauging Report dated March 30, 1984, "corrected" report to change water gauge and barrels, also changing "net standard volume") .

[8] Charterers' Exhibit 9

[9] 107 S.Ct. 2332 (1987)

Refining Inc. v. M/T LAUBERHORN,[10] where the Court of Appeals for the Fifth Circuit found Valero's RICO claim to be arbitrable in a maritime setting.

Having concluded that the panel is empowered to and should consider a RICO claim asserted in arbitration, additional briefing on the statute and its application to this case, together with the claim for punitive damages, should be made of the parties before the panel decides the remaining issues/claims.

The panel defers its decision on Charterers' claim for attorneys' fees and costs incurred until the final award. Likewise, the panel reserves its right to deal with Owners' interest claim for the late payment of freight in the final award. The costs for the hearing transcripts are to be equally shared by the parties.

The arbitrators' fees, as set forth in Appendix A attached hereto, are an integral part of this award and are the joint and several obligation of both parties. Payment of the fees is to be made pursuant to the directions contained in Appendix A.

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[10] 813 F. 2d 60 (5th Cir. 1987)

THE AWARD:

The panel directs Owners to pay to Charterers the sum of $332,138.41, which we arrived at as follows:

1. Value of cargo short delivered $233,544.32

2. Interest on Item 1. at 9.5% p.a. for the period from March 30, 1984 to the date of this award 98,594.09

$332,138.41

If this award has not been satisfied in full within 30 days from the date of this award, interest at the rate of 10% per annum shall resume on the principal amount and continue to run until payment in full has been made or the award has been reduced to judgment, whichever first occurs.

/s/
Alexis Nichols

/s/
Louis P. Sheinbaum, Esq.

/s/
Manfred W. Arnold, Chairman

New York, New York
September 7, 1988

APPENDIX A

The panel's fee for rendering this award is $31,200, or $10,400 per arbitrator.

Each side is to pay each arbitrator the sum of $5,200. The panel reserves its right to reallocate the fees in its final award.

The liability for the panel's fees is joint and several.

(In the Matter of the Arbitration
between
Triumph Tankers Ltd., as Owners
of the TRIUMPH
and
Kerr McGee Refining Corp.,
as Charterers)

New York, New York
September 7, 1988

APPENDIX B
(TO FINAL AWARD WHICH IS AT PETITIONER'S APPENDIX 20a *et seq.*)

The panel's fee for rendering this award is $54,000, or $17,000 each for Messrs. Sheinbaum and Arnold and $20,000 for Mr. Nichols.

Although the arbitrators' fee is assessed in full against the Owners, payment in the first instance is to be made in full by the Charterers.

The arbitrators' fee is the joint and several obligation of both parties.

(In the Matter of the Arbitration
between
Triumph Tankers Ltd., as Owners
of the TRIUMPH
and
Kerr McGee Refining Corp.,
as Charterers)

New York, New York
March 28, 1990